

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NAOMI M.,

Claimant,

Vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2011050549

DECISION

This matter came before Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, for hearing on June 8, 2011, in Torrance. Claimant Naomi M. was represented by her mother, Nikki T. Harbor Regional Center was represented by Gigi Thompson, Fair Hearing Coordinator.

Harbor Regional Center presented Exhibits A – Z and the testimony of the program manager of children’s services. Claimant presented Exhibits A, F, G, I –Q, S, T, and V – Z and the testimony of the mother and a speech and language pathologist. At the conclusion of the hearing on June 8, 2011, the record was held open for claimant to file a speech evaluation. On June 29, 2011, Harbor Regional Center filed the Speech and Language Evaluation, which was marked as Exhibit B. All of the parties’ exhibits were admitted into evidence.

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on June 29, 2011, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should receive speech and language services from Harbor Regional Center.

FACTUAL FINDINGS

1. Claimant is an eight-year-old girl who has been diagnosed with Phelan-McDermid Syndrome, or 22q13.3 Deletion Syndrome, an uncommon genetic or chromosomal disorder marked, in part, by global developmental delays, including moderate to profound mental retardation, general hypotonia, and absent to severely delayed speech. Based on a diagnosis of moderate mental retardation and her developmental delays and disabilities, claimant is a client of and eligible to receive services from the Harbor Regional Center (Service Agency). Currently, the Service Agency is providing claimant with respite. She also receives 50 hours per month in In-Home Supportive Services and has Medi-Cal benefits or coverage. Her incontinent supplies are funded by Medi-Cal.

2. As set forth in her Individual Family Service Plan (IFSP), claimant lives with her mother and maternal grandparents. Her father visits every other weekend. Claimant is non-verbal and communicates by using a combination of sign language, gestures, and sounds. She must be supervised for her own safety, for she tends to fall due to an unsteady gait and to wander away. She relies on adult assistance for most of her self-help needs. At home, claimant has begun to display tantrums and defiance. She seeks sensory input by putting objects in her mouth and grabbing objects. She displays repetitive actions, such as waving and flapping her hands when excited. Her mother reports that claimant is happy and enjoys interacting with her family but does not know how to initiate play with her peers.

3. Claimant attends elementary school in the Long Beach Unified School District (school district) where she is eligible for special education services and supports. She is in a special day class and receives individual speech and language services, occupational therapy, physical therapy, adaptive physical education, Picture Exchange Communication System (PECS) training, Augmentative or Alternative Communication (AAC) consultation services, extended school year services, and transportation. Under her May 2009 Individualized Educational Program (IEP), the school district planned to provide claimant with individual and group speech and language services three times weekly.

4. On August 13, 2008, on referral by her pediatrician, claimant underwent a speech and language evaluation at Miller's Children Hospital in Long Beach (MCH) to assess her communicative ability and her need for additional speech and language treatment. At that time, claimant was receiving one hour per week of speech therapy at school that emphasized verbal expression and sound production. She used a Super Talker voice output communication device. She was also receiving services from the Speech-Language and Hearing Clinic at California State University Long Beach (CSULB) that focused on her use of PECS. Based on this evaluation, the MCH speech pathologist recommended that claimant receive intensive speech and language therapy for a total of two to three hours per week at the MCH clinic to help her to acquire receptive and expressive language skills and to improve her speech production and oral motor skills. In addition, the MCH speech pathologist recommended that claimant continue to receive speech and language intervention services at school and that all of her speech providers remain in contact to address all aspects of her speech development.

5. On March 30, 2009, the school district conducted a speech and language evaluation of claimant as part of her triennial special education evaluation. At that time, claimant was enrolled in a kindergarten special day class for pupils with moderate to severe disabilities. She presented with severe delays in speech and in receptive and expressive language which were not unexpected due to her diagnosis for Phelan-McDermid Syndrome. She could vocalize only limited speech sounds but showed progress in her receptive language skills, particularly with her ability to identify familiar objects. Subsequently, the school district assessed claimant's baseline abilities in her use of PECS.

6. In February 2010, graduate student clinicians and a clinic supervisor at the CSULB hearing and speech clinic conducted an assessment of claimant. At that time, claimant had been attending the clinic for eight school semesters. The primary concern of her mother was claimant's ability to communicate her wants and needs. The clinicians informally assessed claimant's behaviors, speech, and language and conducted an oral facial examination. Claimant remained nonverbal and communicated with sign language, PECS, and gestures. During the assessment, she used some sign language and gestures spontaneously but needed prompts to interact and to express herself. Claimant was assessed with severe expressive and receptive language delay and recommended to receive an individual, one-hour speech and language therapy session per week. The goals of the therapy at the CSULB clinic were for claimant to improve her use of sign language and PECS for better communication. Claimant continues to receive services at the clinic on a once weekly basis.

7. (A) On April 27, 2010, a speech and language pathologist and an assistive technology specialist from the Service Agency conducted an AAC consultation to determine what communication device claimant should be using to better communicate with her family and others. At school, she was using a Super Talker device that her mother indicated was not working well for her. The speech and language pathologist noted that claimant was receiving speech and language therapy at the CSULB clinic and MCH. Her speech therapy at the CSULB clinic focused on expanding her use of PECS as well as sign language and gestures and improving her receptive language skills. At MCH, she was receiving speech and language therapy that addressed her receptive and expressive language skills, the development of her functional communication by the use of sign language and PECS, and her oral motor abilities.

(B) The Service Agency evaluators found that claimant communicates non-verbally by using eye gazes, facial expressions, pushing and pulling, vocalizations, sign language, and pointing. She often uses two of her forms of communication simultaneously, expresses emotion through facial expressions, and gestures in response to questions. Claimant displayed persistent communication skills and adequate cognitive abilities. She was motivated to communicate. The Service Agency evaluators recommended that claimant continue to receive speech and language therapy through the CSULB clinic and MCH to address her delays in speech and language development and to use a communication approach consisting of gestures, sign language, a voice output augmentative communication device, and pictures at school, home, and in therapy. The Service Agency evaluators also recommended that her family provide claimant with opportunities to use her multiple communication approach and that professionals working with claimant consult and collaborate with one another and with the family to address the same communication goals.

8. On September 3, 2010, pursuant to a mediation in settlement of a due process complaint, the school district amended claimant's IEP and agreed to begin providing her with four hours weekly of individual speech and language services. Since the mediation, however, claimant has been receiving only one and one-half or two hours weekly of speech and language services from the school district.

9. (A) On February 9, 2011, claimant underwent an AAC evaluation by an augmentative communication specialist to determine what augmentative communication device was most appropriate for her needs. Claimant demonstrated that she has sufficient fine motor abilities to access electronic communication devices with touch-sensitive screens. She showed intent and desire to interact and communicate by relying on gross vocalizations, including whining, facial expressions, gestures, such as pointing, signs, occasional head nods and shaking, and by bringing an object to an adult or taking an adult to the object. She was able to understand simple and basic directions but did not have a functional means of communication that was understood by others or was reliable.

(B) Based on the evaluation, the specialist opined that, for claimant to develop the functional use of any augmentative communication device, it will be necessary to train all individuals involved in her support and to provide claimant with intensive speech and language intervention to teach her how to utilize the device effectively. The specialist recommended that claimant use a voice output augmentative communication device in conjunction with her gestures and vocalizations to communicate with others. Specifically, the specialist recommended that claimant be provided with a Dyna Vox M3 communication device with mounts, that she use the device at school, at home, and during speech and language therapy sessions, and that training be provided to claimant, school staff, service providers, and family in the use of the device. In addition, the specialist recommended that claimant receive speech and language intervention services at least two or three times weekly during which therapy should focus on teaching her to use the device for functional communication.

10. On March 10, 2011, Christopher G. Stevens, M.S., a speech pathologist at MCH, prepared a Speech and Language Discharge Report. Claimant had been receiving services at MCH for two and one-half years in twice weekly 60-minute sessions. Stevens discussed claimant's progress towards her goals to improve her receptive and expressive language skills, her cognitive and academic skills, and her oral motor and speech production skills. Claimant had made "tremendous progress" in her speech and language therapy program, for she had learned to combine several signs together, produce verbal approximations, and follow a variety of commands. Stevens opined that claimant would continue to benefit from speech and language services from both her school and an outpatient setting and from treatment with several high tech communication systems to augment her language skills. Claimant was discharged because the MCH out-patient program was supposed to provide short-term therapeutic services for three months to one year.

11. (A) On March 15, 2011, after her daughter had been discharged from the MCH speech and language therapy program, claimant's mother asked the Service Agency to provide at least two hours weekly of speech therapy. Her mother indicated that the speech services were important for claimant to make improvements in the cognitive and psychosocial effects of her disability. On March 23, 2011, the Service Agency held a meeting to revise claimant's IFSP. A Service Agency counselor advised claimant's mother that Riverview Hearing, Speech, and Language Center in Long Beach (Riverview Speech Center) accepted Medi-Cal funding to provide speech therapy but had a two-month waiting period and recommended that she place claimant on the waiting list. Claimant's mother asked that the Service Agency provide or fund for speech therapy until her daughter was able to start services at Riverview Speech Center.

(B) On April 1, 2011, Riverview Speech Center informed claimant's mother that there was a waiting list for speech and language evaluations and speech therapy. On April 1, 2011, claimant's mother asked the Service Agency again to provide her daughter with speech services. In a letter dated April 15, 2011, the Service Agency encouraged claimant's mother to contact Total Education Solutions, a speech provider that accepted Medi-Cal funding, for speech services, and to ask for an IEP meeting so that the school district could provide additional speech services or support.

(C) On May 14, 2011, claimant's mother informed the Service Agency that Total Education Solutions in Pasadena was not a reasonable alternative for speech services because it was located too far from her home in Long Beach. The mother also stated that the school district had previously agreed in October 2010 to provide additional speech therapy although it had not yet begun to do so.

(D) On May 17, 2011, claimant's health insurance company approved her request for a speech therapy evaluation by Newport Language and Speech Center in Fountain Valley.

(E) On May 31, 2011, the Service Agency denied claimant's request for speech services funded by the regional center because she is eligible for Medi-Cal services and funding, a generic resource, and the Service Agency had identified providers that accepted Medi-Cal and could provide the service to her. On April 25, 2011, claimant filed a Fair Hearing Request, asking for speech therapy from the Service Agency.

12. On May 27, 2011, Riverview Speech Center informed claimant by letter that there was a four to six month waiting time for speech and language evaluations and a two to three month waiting time to then receive speech therapy.

13. At the hearing in this matter on June 8, 2011, MCH speech pathologist Stevens testified that, while treating claimant, he observed significant progress in her speech and language. She learned to use pictures to communicate, some vocalizations, and a spoken vocabulary. When she was not in speech therapy for an extended time period, claimant needed two weeks to adjust and re-acclimate to the therapeutic environment. Claimant learns in a manner that differs from other children. She needs repetition and time to get used to a setting. Stevens reiterated his written opinion contained in the MCH Discharge Report that claimant would benefit from out-patient speech and language therapy as long as she continued to participate in her school speech program and worked on her speech and language skills at home with the guidance of a therapist.

14. (A) On June 15, 2011, claimant underwent a speech and language evaluation by speech and language pathologist Samantha McComb, M.A., of the Newport Language and Speech Center. McComb noted claimant is almost eight years old and currently receiving speech and language therapy three times weekly in 30-minute individual sessions through the school district and attends the CSULB hearing clinic once weekly. The speech and language pathologist assessed claimant's receptive and expressive language by administering the Non Speech Test and the Functional Communication Profile, conducting clinical observations, and interviewing her mother.

(B) As set forth in her Speech and Language Evaluation dated June 17, 2011, McComb diagnosed claimant with profound impairment of her receptive and expressive language. Her receptive language skills were determined to be at the 22-25 month level and her expressive language skills were at the 12-15 month level. She is able to identify simple, common vocabulary words and follow routine and learned one-step commands but is not able to follow a variety of directions or new commands, cannot understand prepositions, and cannot identify a variety of vocabulary words in different categories. Claimant is non-verbal but can use sign language when given verbal cues to communicate. McComb found claimant has been exposed to PECS and different AAC devices but has limited functional use of any picture communication system or device at this time.

(C) McComb recommended that claimant receive clinic-based, individual speech and language therapy two times weekly, which would be in addition to the speech and language services that she receives at school. The speech and language pathologist also recommended that there should be collaboration with claimant's other service providers, including her speech, occupational, and behavioral therapists, and that her family should be provided with training and a home program. The suggested goals for the clinic-based, individual speech and language therapy are to improve claimant's receptive and expressive language skills, collaborate with her other service providers, and provide a training and education program to her parents.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request for speech and language services, based on Findings 1 – 14 above.

2. Discussion--Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)¹

The Legislature has further declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must not only be individually tailored to the consumer (§ 4648, subd. (a)(2)) but also provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. In addition, regional centers must consider the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

Until four months ago, claimant received two hours weekly of speech and language therapy from the MCH out-patient program. She attended the MCH program for two and one-half years. At the same time, claimant received one hour weekly of therapy at the CSULB hearing and speech clinic as well as one and one-half or two hours weekly of speech services at school. In March 2011, when claimant was discharged from the MCH program, claimant's mother asked the Service Agency to provide her daughter with two hours of weekly speech therapy. The Service Agency recommended two vendors which accepted Medi-Cal funding. One of the vendors is located too far away in Pasadena and the second vendor, Riverview Speech Center, while much closer to claimant's home, has a two to three month waiting list

¹ All section references are to the Welfare and Institutions Code.

for speech therapy after a consumer receives a speech evaluation. Claimant's mother desires that her daughter receive speech services at Riverview Speech Center. Claimant underwent a speech evaluation on June 15, 2011. It is anticipated that claimant should be able to start speech services at Riverview Speech Center after a waiting period of no more than three months, or in September 2011.

In the meantime, claimant's mother still seeks what may be called "gap services" from the Service Agency until her daughter can begin receiving Medi-Cal funded speech services at Riverview Speech Center. Claimant does need out-patient speech therapy in addition to the speech services that she receives at school and at CSULB clinic. Her former speech pathologist at the MCH program has recommended that she continue to receive out-patient speech and language therapy and the speech and language pathologist at Newport Language and Speech Center has recommended that she receive clinic-based therapy two times weekly. However, the Newport Language and Speech Center pathologist also recommended in her June 17, 2011 speech evaluation that claimant's clinical speech therapist collaborate with her other service providers. Service Agency specialists made this same recommendation for collaboration last year following an AAC consultation.

In this appeal, if the Service Agency were to fund speech services for two or three months, it is questionable how much collaboration can be achieved by a new and temporary speech therapist with claimant's speech providers at school and at the CSULB clinic, much less her other service providers, while she is waiting to start services at Riverview Center. Any such gap speech services that she would receive in this short time period would not necessarily be effective or beneficial for claimant who needs time to become accustomed to a new therapeutic setting. As such, the circumstances of this appeal require that the Service Agency follow the legislative mandate to utilize generic services and supports when appropriate and not to use regional center funds to supplant the budget of any agency that legal responsibility to serve the public. In other words, the Service Agency should not be required to fund speech services for claimant when Medi-Cal funded services at Riverview Speech Center will be available for claimant within a short time.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal or request of claimant Naomi M. that the Harbor Regional Center provide speech and language therapy or services is denied.

Dated: July 13, 2011

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.